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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,183	02/25/2004	Harold M. Zimmerman		3704
32993	7590	05/16/2006		
MILLER LAW GROUP, PLLC 25 STEVENS AVENUE WEST LAWN, PA 19609				
			EXAMINER SOOHOO, TONY GLEN	
			ART UNIT 1723	PAPER NUMBER

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/786,183

Applicant(s)

ZIMMERMAN, HAROLD M.

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 17-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 33-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2-25-04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-16 and 33-39, drawn to a turbine mixer, classified in class 366, subclass 263.
  - II. Claims 17-32, drawn to a method of making concrete, classified in class 366, subclass 002.
2. Inventions Group II and Group I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed may be used to practice another and materially different process such as hydration of polymer powder with water.
3. Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.
4. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with L. Miller on May 5, 2006 a provisional election was made WITHOUT traverse to prosecute the invention of Group I, apparatus

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claims, claims 1-16 and 33-39. Affirmation of this election must be made by applicant in replying to this Office action. Claims 17-32 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

6. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: a positive structure connected to the turbine mixer to permit 1) the operation of supply of the cement and water and 2) the structure to permit operation of introduction of the cement paste into the "said chamber" by the intended use (or the intended effect phrase) of "operable to receive a supply of dry cement and a supply of water to pre-mix said cement and said water into a cement paste before being introduced into said chamber to be combined with aggregate". Absent any positive structure defined by the claim, as presently worded, the scope is read that the mere structure of a turbine mixer housing will fully satisfy the intended operation of feed and discharge.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-5, 9-15, and 33-34, are rejected under 35 U.S.C. 102(b) as being anticipated by Williams 5813754.

Williams discloses a turbine mixer 16 which may structurally operate to perform and intended use of mixing cement from a metered supply 21, and liquid from the port 22, 24, with a housing 11, 12, forming a an inner chamber and an outer chamber about 17 having discharge port whereby there between the inner and outer chambers is formed a turbine mixing plate 13 with agitating fins 74 as seen in figure 4. with regards to claim 14, note that eh drive to rotate the turbine impeller 13 may operate at any RPM if so operated.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 6-7 and 35-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams 5813754 in view of Mazer 5322357.

The Williams ('754) reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of fins on the circumferential periphery of the centripetal impeller.

The reference to Mazer is cited as evidence to known different configurations of impeller rotors whereby the rotating plate impeller may have fins at the periphery of the

disk plate portion, see examples of figure 3, element 62 extending from the cross sectioned plate, or figure 2, element 33 on the right hand side .

In view of the showing that it is known to utilize rotating plate impellers having fins at the periphery of the disk plate portion, it is deemed that it would have been obvious to one of ordinary skill in the art to substitute for the impeller type of Williams with other known functional turbine equivalents in order to lower costs by utilizing known impeller configurations available at hand such as shown by Mazer, or to provide a more effective impeller flow geometry provided by such known impellers.

With regards to claim 7 note that the Williams drive may be operated at any RPM if so desired).

11. Claims 6-7 and 35-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams 5813754 in view of Hollingsworth 4822482.

The Williams ('754) reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of a slidably, adjustable opening at the discharge opening.

The reference to Hollingsworth is cited as showing that it is known to utilize a sliding valve element 12 located at an opening which discharges slurry from the opening so as to control the amount of slurry which passes through in discharging from that opening.

In view of the teaching and showing by the Hollingsworth reference that one may utilize a sliding valve to control the rate of slurry discharge from an opening, column 7, line 63-65, it is deemed that it would have been obvious to one of ordinary skill in the art

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to provide for the opening at 17 of the Williams device with a slidably, adjustable, discharge opening so as to better regulate the rate of discharge from the mixing chamber.

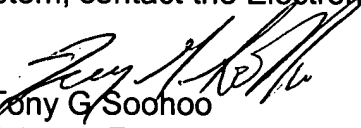
**Conclusion**

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Arribau 5904419 and Zingg et al 3326536 disclose mixing turbines

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tony G. Soohoo  
Primary Examiner  
Art Unit 1723

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